



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[EPA-HQ-OEM-2015-0725; FRL-9987-23-OLEM]

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; announcement of effective date.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the amendments to the Risk Management Program under the Clean Air Act put forward in a final rule published in the Federal Register on January 13, 2017 are in effect.

DATES: The rule amending 40 CFR part 68, published at 82 FR 4594 (January 13, 2017) and delayed at 82 FR 8499 (January 26, 2017), 82 FR 13968 (March 16, 2017), and 82 FR 27133 (June 14, 2017), is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA established a docket for the “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act” under Docket ID No. EPA-HQ-OEM-2015-0725, which includes this announcement. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

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SUPPLEMENTARY INFORMATION: On January 13, 2017, EPA finalized amendments to the Accidental Release Prevention Requirements for Risk Management Programs under the Clean Air Act, Section 112(r)(7) (RMP Amendments rule; 82 FR 4594). On January 26, 2017, the EPA published an action in the Federal Register that initially delayed the effective date of the RMP Amendments rule for a short period of time (82 FR 8499). The EPA further delayed the effective date of the RMP Amendments rule through additional EPA actions published in the Federal Register on March 16, 2017 and June 14, 2017 (82 FR 13968 and 82 FR 27133, respectively). On August 17, 2018, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision vacating the June 14, 2017 rule (82 FR 27133) that had delayed the effective date of the RMP Amendments rule until February 19, 2019. On September 21, 2018, the Court issued its mandate which makes the RMP Amendments rule now effective.

Section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule announcing the effectiveness of the RMP Amendments

rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary.

Specifically, updating the Code of Federal Regulations (CFR) to reflect the requirements of the RMP Amendments rule is a ministerial act. The Court specifically identified as vacated the June 14, 2017 rule that had delayed the effectiveness of the RMP Amendments rule until February 19, 2019. The rule published today simply implements the decision of the Court. Since EPA lacks discretion to do otherwise, it would serve no useful purpose to provide an opportunity for public comment on this issue. The requirements of CAA section 307(d), including the requirement for public comment and a hearing on proposed rulemakings, do not apply to this action because 5 U.S.C. 553(b)(3)(B) applies.

Moreover, the agency finds that the considerations outlined above to support issuance of this rule without prior notice and comment also provide good cause for making this action effective immediately under section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d). Section 553(d) provides in pertinent part that final rules shall not become effective until 30 days after publication in the Federal Register, “except ... as otherwise provided by the agency for good cause.” The purpose of section 553(d) of the APA is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). In determining whether good cause exists to waive the 30-day effective date under the APA, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105. Here, the decision of the Court vacating the Delay Rule

and the issuance of the mandate have taken the issue of timing out of EPA's control. As noted above, we are simply implementing the Court's mandate by undertaking the ministerial act necessary to update the Code of Federal Regulations. Accordingly, this rule will take effect upon publication in the Federal Register. 5 U.S.C. 553(d).

Dated: November 21, 2018.

Andrew R. Wheeler,
Acting Administrator.

Accordingly, the rule amending 40 CFR part 68, published at 82 FR 4594 (January 13, 2017), and delayed at 82 FR 8499 (January 26, 2017), 82 FR 13968 (March 16, 2017), and 82 FR 27133 (June 14, 2017), is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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